IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Bail Appl..No. 6859 of 2007()

CRLMC.782/2007 of DISTRICT COURT, MANJERI
O.R.NO.10/07 OF KODUMPUZHA FOREST RANGE

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PETITIONER : ACCUSED NO.1:

KODALI KUNHUMUHAMMED, AGED 71 YEARS,
S/O.HASSAN, THOTTEKKAD LAKSHAMVEEDU COLONY,
POOKALATHUR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE:

THE STATE OF KERALA REPRESENTED BY THE
FOREST RANGE OFFICER, KODUMPUZHA FOREST RANGE-
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.6859 OF 2007

Dated this the 22nd day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Forest Act. On receipt of discreet information, the officials of the Forest Department conducted the search of a residential premises occupied by the widowed sister of the petitioner herein. 140 Kgs. of sandal wood freshly/recently collected from the forest were found concealed in the premises in gunny bags. The investigation suggested to the officials that the sandal pieces were kept in the premises by the petitioner and his son. Accordingly, a crime has been registered. The petitioner and his son have been shown as accused 1 and 2. Investigation is in progress. The officials have not been able to arrest the petitioner or his son so far. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is old, sick and infirm. Recovery was not effected from his house. There is also a submission at the Bar that the petitioner is mentally ill. In these circumstances, directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The Case Diary has been placed before me for my perusal. I have perused the same. The indications reveal that though the house belongs to the widowed sister of the petitioner, the petitioner and his son used to frequently visit the said house. At the moment and with the available inputs, I find no circumstances which can justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge